



BOARD OF INQUIRY (*Human Rights Code*)

IN THE MATTER OF the Ontario Human Rights Code, R.S.O. 1990, c.H.19, as amended;

AND IN THE MATTER OF the complaint by Angie Anishinabie dated June 6, 1992, alleging discrimination in services on the basis of sex, race and ancestry by the Near New Store and Gordon Henderson.

B E T W E E N :

Angie Anishinabie

Complainant

- and -

The Near New Store
Gordon Henderson

Respondents

INTERIM DECISION

Adjudicator : H.A. Bassford

Date : June 16, 1995

Board File No: BI-0032-95

Decision No : 95-027-I

Board of Inquiry (*Human Rights Code*)
150 Eglinton Avenue East
5th Floor, Toronto ON M4P 1E8
Phone (416) 314-0004 Fax: (416) 314-8743
Toll free 1-800-668-3946

IN THE MATTER OF the *Human Rights Code*, R.S.O. 1990, c.H.19, as amended;

BETWEEN

Angie Anisinabie

Complainant

-and-

Near-New Store and Gordon Henderson

Respondents

Before: H.A. Bassford
Board of Inquiry

Hearings: By Conference Call
June 16, 1995

Appearances: Bill Holder
Counsel for the Human Rights Commission

Decision: Preliminary Motion

The hearing on this matter was reconvened by conference call in order to hear a motion brought by the Commission. The motion is for the board of inquiry to make the following orders: (i) that the Respondent not contact the Complainant, either directly or indirectly, except through Commission Counsel and (ii) that the Respondent not harass or intimidate any witnesses with respect to this proceeding.

The parties, including the Respondent, were served with the notice of motion and with the affidavit of Lina Bava upon which the Commission relies in support of its motion. Notice of the hearing by conference call was given indirectly by telephone to Mr. Henderson's brother-in-law, Mr. Bill Ottway, but only on the day before the call. Mr. Henderson did not participate in the conference call.

Mr. Holder asked that I make the requested orders under s. 23 (1) of the *Statutory Powers Procedure Act*: "A tribunal may make such orders to give such directions in proceedings before it as it considers proper to prevent abuse of its processes." He stated that the Commission is concerned for the safety of the complainant and witnesses, with this concern arising from threats made by the respondent against witnesses to be called at the hearing. Even if the threats are not acted upon, the witnesses may fear reprisal. It is in the best interest of justice to have evidence given freely.

Mr. Holder relied in part upon an affidavit of Lina Bava in support of the motion. Ms. Bava is a Human Rights Officer with the Ontario Human Rights Commission. She became the investigating officer in the present complaint on October 3, 1994. Her review of the file revealed a number of incidents where the Complainant used intimidating language and/or threatened individuals who will be called as witnesses in this hearing.

I shall not detail all of the evidence of the affidavit, but shall give several examples. In September, 1993, Mr. Henderson stated in a telephone conversation with Linda Britt, who was then the investigating officer, "I'm tired of Indian cocksuckers calling me 'white trash'...I'm tired of beating the shit out of these fuckin Indians...fuckin Indians bitch about everything." Mr. Henderson then said to Ms. Britt, "you live on Van Horne -- Van Norman right -- I know where you live." Also in Sept. 1993 when told by Ms. Britt that Dan Welch would be dealing with the file, Mr. Henderson stated, "you tell Dan Welch that I will meet him in the back and I'll deal with him all right." In a subsequent telephone conversation with Ms. Britt, he stated that "by the time this is over someone is going to be six feet under for putting me through this." Finally, at the end of the Conference Call which commenced this hearing, Mr. Henderson was

heard by Mr. Holder to state that "someone will pay."

Mr. Holder relied secondly upon an unacknowledged intimidating letter received by the Complainant two days after the case conference. A copy of that letter was faxed to me after the conclusion of the conference call. There is no question but that it is an intimidating letter. Ms. Anishinabe believes the letter was from Mr. Henderson. The correct spelling of her last name and her address are not generally known, but he became aware of them at the case conference.

On its face the evidence of the Commission clearly supports the proposition that Mr. Henderson has used intimidating language and has made threats to potential witnesses in the present proceeding. As well, Ms. Anishinabe is justified in her perception of intimidation.

But it must be borne in mind, in deciding whether or not grant the Commission's motion, that the evidence of neither Ms. Bava nor Ms. Anishinabe has been tested by cross-examination, and that the notice of this hearing was shorter than normally required. I note that the intimidating language and threats to the potential witnesses, who were officers of the Human Rights Commission, occurred twenty-one or more months ago. In light of this, and in light of the current circumstances of notice, I must deny part (ii) of the motion, and shall not make the order requested.

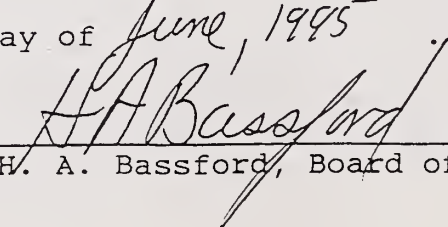
Ms. Anishinabe's perception of threats and intimidation is of recent duration. As Mr. Holder argued, it is necessary for the process of this hearing that evidence be given freely and without fear of reprisal. I accordingly grant part (i) of the motion, and shall so order.

ORDER

Under s. 23 (1) of the *Statutory Powers Procedures Act*, I hereby make an order on an ex parte basis that the Respondent, Mr. Gordon Henderson, not contact the Complainant, Ms. Angie Anishinabe, either directly or indirectly, except through Counsel for the Ontario Human Rights Commission.

This order is in effect until the next scheduled hearing day, which is July 24, 1995. If Mr. Henderson objects to this order, he may make representations to have it removed at that time.

Dated at Toronto this 16th day of June, 1995


H. A. Bassford, Board of Inquiry